

PUBLIC PROSECUTOR

AND

ABDULLAH MUHAMMAD SHAM KHAIRUNNAS BIN ABD WAHAB

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 18 of 2018)**

ABDULLAH MUHAMMAD SHAM KHAIRUNNAS BIN ABD WAHAB

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 2 of 2019)**

Before: Burrell P, Seagroatt and Lunn JJ A.

10th April 2019

Headnote – Sentence – Appeal by Public Prosecutor (S.430 Cap 7) against sentence of 19 months imprisonment for forgery and personation of a police officer. Held not manifestly inadequate in the particular circumstances of the case

Criminal Appeal No 18 of 2018

DPP Suriana binti Hj Radin for Appellant

Respondent in person

Criminal Motion No 2 of 2019

Appellant in person

DPP Suriana binti Hj Radin for Respondent

Cases cited in the Judgment:

Public Prosecutor v Rome bin Morni (HCCT 21/2010)

Public Prosecutor v Sohali bin Haji Matali [2007] 1 JCBD

Public Prosecutor v Sambari bin Hj Abu Bakar (BSB/2012)

Burrell, P.:

These are cross appeals. The appellant in Criminal Motion No 2 of 2019 seeks leave to appeal out of time against a total sentence of 19 months imprisonment having pleaded

guilty to 2 counts of forgery for the purpose of cheating contrary to s.468 of the Penal Code and 4 counts of cheating by personation of a traffic police officer contrary to s.419 of the Penal Code. The sentences were passed by Judge Safiee in the Intermediate Court on 3rd November 2018 and were ordered to run from 11th October 2018.

The Public Prosecutor in Criminal Appeal No 18 of 2018 invites this court to find that the final sentence of 19 months imprisonment is manifestly inadequate and substitute a longer sentence properly to reflect the offences committed, pursuant to s.430 of the Criminal Procedure Code Chapter 7. We will address the Public Prosecutor's appeal first.

Facts

On 27th September 2018 using his girlfriend's computer the applicant forged and copied a number of Royal Brunei Police Force receipts designed to be given to drivers who had been stopped whilst driving by a police officer and made to pay a "on the spot" fine for an offence, such as, not wearing a safety belt whilst driving. In addition he had similarly forged and copied a number of documents bearing the official RBPF logo designed to be issued to road users informing them that such an offence had been committed. The applicant's simple *modus operandi* was, whilst dressed as and pretending to be a traffic police officer, to stop a driver, issue one of the latter forged documents, take money from the driver, then issue a forged receipt.

He pleaded guilty to carrying out this scam on 4 occasions between 1st and 3rd October 2018 receiving from the drivers the sums of \$100, \$50, \$100 and \$130 for the alleged offence of failing to wear a seat belt. On each occasion the drivers believed the applicant to be a police officer and complied with his directions accordingly.

When the applicant was arrested in early October 2018 he admitted his guilt and entered pleas of guilty at the earliest opportunity. He had no previous convictions and explained that as an only son he felt responsible for the care of his elderly mother and committed the offences to raise money. He is 23 years old. When sentencing the judge accepted that the applicant was remorseful.

Sentence

In his reasons for sentence the judge referred to and considered the cases of:

Public Prosecutor v Rome bin Morni (HCCT 21/2010)

Public Prosecutor v Sohali bin Haji Matali [2007] 1 JCBD

Public Prosecutor v Sambari bin Hj Abu Bakar (BSB/2012)

These cases are helpful to the extent that the charges involved are the same but, as always, are fact sensitive in respect of the number of offences committed and the amount of money involved. They nonetheless provide some guidance for comparative purposes.

The judge also took into account the applicant's pleas of guilty, his previous good character and mitigation. He passed the following sentences.

s.468 forgery offences, 16 months imprisonment from a starting point of 2 years to be served concurrently.

s.419 cheating offences, 12 months imprisonment from a starting point of 18 months also to be served concurrently with each other. Addressing the principle of totality he was initially minded to make 6 months of the 12 months on the 8th charge (cheating) consecutive to the 16 months for forgery but “as an act of leniency” ordered that only 3 months be served consecutively, making a final sentence of 19 months. Thus, the sentence would have been about 28 months after trial.

Discussion

The individual sentences are well within a proper range for offences of this type and are largely consistent with the authorities cited above and with the further examples referred to in the Public Prosecutor’s written submission dated 28th March 2019 which we consider unnecessary to further set out in this decision. Save to say that reliance placed on the case of *Viviyanti binti Hj Mohd Ali v Public Prosecutor (Criminal Appeal No 14/2016)* is misplaced. That case involved multiple charges of cheating and forgery, which was in essence bribery and corruption by a public servant involving a significantly large sum of money. It does not assist in the determination of this case.

The appellant’s submission states that “it is our submission that the individual sentences of imprisonment (of 16 months and 12 months) appear to be proper.” It is further submitted however that the final sentence of 19 months is manifestly inadequate. The argument put forward is that it “fails to reflect the overall criminality of the crimes committed.” The prosecution submit that whilst it was correct to make the two sentences of 16 months concurrent the judge should, in order to achieve an appropriate final sentence to reflect the overall criminality, have made the whole of one of the 12 month sentences for cheating plus part of another of the cheating sentences also consecutive so that a final sentence of at least 30 months was passed.

We take the view that the judge when considering the principle of totality was right to order that part of the sentences should run consecutively to others. Had he chosen to add 6 or even 12 months to the 16 months for the forgery offences it might still have been difficult for an appellant to persuade this court that the final sentence was manifestly excessive. In the end, having considered all factors both for and against the defendant, he selected “out of leniency” 3 months.

A judge is entitled to exercise mercy and leniency in appropriate cases. He would be in error not to do so. In this case, he having seen and heard the defendant in court, we find ourselves unable to criticize his decision to exercise some degree of leniency. Whilst the final sentence might be regarded as being at the lower end of an acceptable range and whilst a slightly higher sentence would still be unappealable by the offender, we cannot say that 19 months is inadequate nor manifestly so. This court also has seen and heard the respondent/defendant. Having heard his submission, which focused on his family circumstances, his remorse and his promise not to re-offend in the future, we see no reason to criticize the sentencing judge for his leniency in making only 3 months consecutive to the 16 months.

The Public Prosecutor's appeal No 18 of 2018 is accordingly dismissed.

Criminal Motion 2/2018

We now turn to the application for leave to appeal against the 19 month sentence out of time. The sentence was passed on 3rd November 2018. The filing of the Notice of Appeal is dated 15th January 2019 which is approximately 6 weeks after the 28 day time limit. However, in view of our remarks above in Criminal Appeal 18/2018 we find it unnecessary to enquire why the Notice was late. We have noted that the sentence was at the lower end of an acceptable range. In such circumstances it could not be regarded as excessive.

It is plain therefore that there can be no merit and no prospects of success in an appeal to reduce it. Accordingly the application for leave to appeal out of time is refused.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A